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Supreme Court of the United States

October Term, 1974

No. 74-980

H. CLIFFORD LEE, *et al.*,
Petitioners,

v.

HERSCHEL S. ARROWOOD, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO SUPREME COURT OF MINNESOTA

PETITIONERS' REPLY TO THE BUSH FOUNDATION BRIEF

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Unblushing charge of fakery—a rogue's first defense —can neither excuse nor justify predatory conduct that mocks due process and despoils a litigant of a legal right.

Were it true, as is now asserted by The Bush Foundation (in hope to escape review) that the widow has been barred of the widow's share of her husband's estate (pp. 3, 5, 6) "after a full hearing," or "on undisputed facts," or "indisputable evidence," or that even a single issue now in suit was "considered and decided upon evidence" this case would not be here.

The blunt fact—that the Foundation, by extravagance of statement, would hide—is that the widow has been done out of her right on the ground that the earlier state

court judgment is res judicata when there *has never been a hearing*, or *evidence*, *in any court*, *anywhere*, on the critical questions:

> *Whether* the issue of the widow's right to renounce was, or could have been, in issue,
>
> *Whether* the widow was a party in other than a representative capacity, and
>
> *Whether* the widow's incompetence when the judgment was entered would in any event bar its application as res judicata.

Equally erroneous is the contention (p. 3) that the widow has abandoned claim to damages "for breach of the settlement contract."

She has *not* abandoned; it has been taken from her by the Minnesota Supreme Court's *ipse dixit* in lieu of the due process the Constitution demands. The fact alone that such right could so be taken emphasizes the need for this Court's voice to make clear rights are *not* so to be disposed of.

Pretense (p. 6) that the widow litigated to "retain her $2,100,000" is quite inaccurate. Since The Bush Foundation finds it important to refer to it, the Court should know the husband gave the family's Florida estate to The Bush Foundation, subject to the proviso that:

> "So long as she wishes to occupy the premises my dear wife, Edyth Bush, is to have the right to do so free of charge."

Respondents, strangely, took the position that this gave the widow a right "to occupy"—a right that would be lost should she leave the premises. Moreover, asserted respondents, it excused *only* payment of "rent", and required the widow to pay for the upkeep, maintenance, taxes, insurance and every other expense of every kind of the 38 acre estate.

To settle *that* controversy, $2,100,000 was paid.

It had nothing to do with renunciation.

But even if it had been paid to induce the widow to withhold—until the time had passed—filing the renunciation she had signed it would not excuse the fraud, the breach of contract, or the destruction of the widow's right by a ukase that denies due process. It signals need for the Court to look into what here has happened.

Respectfully submitted,

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